

MINUTES OF THE JOINT EXECUTIVE APPROPRIATIONS COMMITTEE

May 20, 2008 at 1:00 p.m.

Room C445, State Capitol, State Capitol Complex

Members Present: Sen. Lyle W. Hillyard, Co-Chair
Rep. Ron Bigelow, Co-Chair
Sen. Peter C. Knudson, Vice Chair
Rep. Rebecca D. Lockhart, Vice Chair
Sen. Curtis S. Bramble
Rep. David Clark
Rep. Greg J. Curtis, Speaker
Sen. Gene Davis
Sen. Mike Dmitrich
Sen. Dan R. Eastman
Sen. Brent H. Goodfellow
Sen. Patricia W. Jones
Sen. Sheldon L. Killpack
Rep. Brad King
Rep. David Litvak
Rep. Carol Spackman Moss
Rep. Phil Riesen
Rep. Gordon E. Snow
Sen. John L. Valentine, President

Members Excused: Rep. Brad Dee

Staff Present: Jonathan Ball, Director, LFA
Andrea Wilko, Chief Economist, LFA
Greta Rodebush, Legislative Secretary

Speakers Present: Tenielle Young, Governor's Office of Planning and Budget
Todd Hauber, Utah State Office of Education
Cosette Mills, Utah Department of Human Services
Michael Hales, Utah Department of Health
Russell Frandsen, LFA
Nannette Rolfe, Utah Department of Public Safety
Thomas Young, LFA
Marc Johnson, Utah State Tax Commission
Danny Schoenfeld, LFA
Dan Anderson, Utah Retirement Systems
Jeff Jensen, Public Employees Health Program
Jonathan Ball, LFA
Mark Bleazard, LFA
Doug Larsen, Wasatch Area Council of Governments
Chuck Chappell, Wasatch Front Regional Council

Note: A list of visitors, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Call to Order - Approval of Minutes

Committee Co-Chair Hillyard called the meeting to order at 1:00 p.m. A motion was not taken on the minutes for April 15, 2008 at this time.

2. Federal Funds Report

Tenielle Young, Governor's Office of Planning and Budget, presented the Federal Funds Report through April 30, 2008. There were two new grants and four reapplications of existing grants requiring legislative action. Ms. Young also noted that four new grants and two reapplications of existing grants had been approved by the Governor's Office.

Co-Chair Bigelow asked about the program description for the Utah State Office of Education's Enhanced Assessment Grant Program. Todd Hauber, Associate Superintendent, Utah State Office of Education, explained that this grant program will develop a better measuring tool for assessing students with special needs under the Utah Alternative Assessment Program (UAA).

In regards to the reapplication of an existing grant, Commission on Criminal and Juvenile Justice, Juvenile Delinquency Prevention Formula Grant, Co-Chair Bigelow stated that he would be interested in receiving a written summary of some of the new and innovative programs that are impacting the prevention and/or reduction of juvenile crime and delinquency.

Co-Chair Bigelow asked about the child abuse and neglect prevention programs with the Department of Human Services, Administration for Children and Families Grant Program. Cosette Mills, Division of Child and Family Services, Department of Human Services, explained that these programs focus primarily on parent education and support in the community and includes a new home visitation pilot program.

3. 2007 General Session Fiscal Note Follow-up

Stan Eckersley, LFA, presented the "Fiscal Note Follow-up & Accountability Report," highlighting selected bills passed in the 2007 General Session.

Of particular interest to the committee was the follow-up report on the original fiscal note for S.B. 42 - Preferred Prescription Drug List.

Michael Hales, Director, Division of Health Care Financing, Department of Health, stated that the original fiscal note estimated the Medicaid General Fund savings at \$2.7 million. However, with the "Medically Necessary - Dispense as Written" amendment, revised savings estimates had been reduced to half that amount, about \$1.3 million. Implementation of the drug list is being phased in over a period of years. As of March 31, annual fiscal year savings estimates for the eight drug classes implemented is about \$666,000 from the General Fund.

Rep. Clark asked if it were possible to receive regular reports on the cost savings. Jon Ball, LFA, explained that Russell Frandsen, LFA, receives monthly updates on implementation and cost savings, and offered to make this information available during a scheduled Executive Appropriations Committee meeting.

President Valentine asked for further clarification about the current estimates for FY 2008 General Fund savings. Mr. Frandsen, LFA, stated that the annualized savings will be about \$600,000 once all classes of drugs have been implemented for an entire year. Mr. Hales further explained that savings estimates have been impacted by market shifts from previous prescribing behavior and secondary rebates from pharmaceutical companies.

President Valentine cautioned about spending savings you may never get.

Sen. Killpack observed that at the time the "Medically Necessary - Dispense as Written" amendment was written, there was some concern that this action would significantly reduce savings projected by the original fiscal note. He stated that he would like to be able to look at the cost savings data more objectively and suggested that it be presented in a spreadsheet format. Mr. Hales stated that he would make those reports available to him.

Sen. Jones asked if qualitative data is available on the success of the drugs for individuals using the Preferred Drug List, and if there have been any problems with the process. Mr. Hales stated that they are not currently measuring specific health outcomes on specific drug classes. As far as the process is concerned, practitioners are working with clients to ensure that appropriate medications are prescribed, and to date, there have not been any significant problems.

Sen. Knudson also asked about health outcomes using the Preferred Drug List versus other medications. Mr. Hales stated that an evidence-based study on health outcomes would be a rigorous study. Sen. Knudson explained that one of the selling points of this program was the assurance given by the Department of Health that the outcomes would be equally as good as using the more expensive, non-generic medications. Sen. Knudson indicated to Mr. Hales, that if you want your argument to hold up, you need to have some way of tracking and reporting this. Mr. Hales stated that the focus has been primarily on the financial aspects of the reporting. However, in response to Sen. Knudson's comments, the Division will put together some studies on health outcomes as well.

Rep. Clark suggested that the Analyst develop a standard for designating a bill within the "Red-Yellow-Green" format of the report. Jonathan Ball, LFA, stated that the office would look into it and report back to him.

Co-Chair Hillyard recognized Co-Chair Bigelow for a motion.

MOTION: Co-Chair Bigelow moved to approve the minutes from April 15, 2008 with one correction on page two, last paragraph, third to the last word in the first line, changing sheep "meet" to "meat." The motion passed unanimously with Sen. Bramble absent for the vote.

MOTION: Co-Chair Bigelow moved to approve two new grants and four reapplications of existing grants requiring legislative action through April 30, 2008 listed in the Federal Funds Report. The motion passed unanimously with Sen. Bramble absent for the vote.

Rep. Clark asked if the approval for Utah Department of Public Safety, REAL ID Demonstration Grant Program, further obligates the State to the REAL ID Act. Nannette Rolfe, Director, Drivers License Division, stated that the approval will not have this effect; however, she did point out that she had

received a recent memo from the Department of Homeland Security, informing the State that if it did not apply for the federal funds, the State would not be eligible for any other REAL ID monies.

Jonathan Ball, LFA, informed the committee that the Fiscal Note Follow-up & Accountability Report also included a list of 2008 General Session bills proposed for the next Fiscal Note Follow-up report organized by bill number and by bill sponsor. He asked that committee members contact him or Stan Eckersley if they would like to add or remove any bills from the list.

4. Refining Revenue Estimates: Impact of Tax Commission Interpretations

Dr. Thomas Young, LFA, presented findings in the report titled, "Revenue Impacts of Tax Commission Decisions," under Tab 4. The study examined whether Tax Commission rulings and interpretations should be specifically controlled-for in revenue estimating. The study was prompted by the Tax Commission's ruling that sales of textbooks by colleges and universities with tax exempt status are not subject to sales tax. The press reported that the fiscal impact of this ruling is \$4 million per year.

Dr. Young pointed out that bills carrying fiscal notes with similar goals have been introduced in the past legislative sessions, and have not passed.

Dr. Young explained the statistical sampling methodology used in the study. In summary, the Office of the Legislative Fiscal Analyst found that a sample of Commission interpretations showed slightly increased revenue overall, but the amount of the revenue change is not significant enough to warrant changes to the forecasting model.

The Analyst's recommendations include the following: (1) The Tax Commission determine which administrative decisions might have an impact greater than \$1 million, and report them to the Office of the Legislative Fiscal Analyst and the Governor's Office of Planning and Budget; (2) Analysts, in conjunction with the Commission, update the likely fiscal impact of final decisions by the start of each legislative session for both one-time and ongoing impacts; and (3) The Tax Commission inform legislative leadership of its decisions relative to issues that were once legislative bills.

President Valentine expressed his support for the Analyst's recommendations.

Co-Chair Bigelow questioned why initiatives that fail to pass the legislature find favor by the Tax Commission. Marc Johnson, Commissioner, Utah State Tax Commission, explained that the Commission's recent decision was not an interpretation of statute but the transmission of information of existing practices. He commented further that prior bills dealt with exemptions for sales on all textbooks regardless of where they were purchased, ie. Internet, bookstore, or retail outlet. The Commission had informed the sponsor that these entities had 501-C3 exemptions. Mr. Johnson stated that the Commission should have informed the Office of the Legislative Fiscal Analyst of its actions.

Co-Chair Bigelow stressed the importance of informing staff who can disseminate information to all legislators. President Valentine stated that legislators need to have equal access to the same information.

Mark Johnson commented that in the past, the Commission has made an effort to report decisions that may have a significant impact on the budget. He stated that the Commissioners would strongly resist formally tracking every decision at a threshold and reporting this information. This may create a "mis-

impression" with the taxpayers that the Tax Commission is having to keep a scorecard and may serve as a disincentive for filing appeals.

Mr. Johnson suggested that the Tax Commission would be willing to identify significant areas that may need to be incorporated into the revenue forecasting database, and inform the Fiscal Analyst before any decisions are made.

Pres. Valentine expressed his concern that future Commissions may not be as responsive as the current Commission in its willingness to communicate information on an as needed basis.

Marc Johnson suggested that an agenda item be added to the revenue forecasting meetings that would include significant Tax Commission decisions in the last quarter or half year.

Co-Chair Bigelow recommended that the Fiscal Analyst be directed to contact the Tax Commission on a monthly basis and request information that would allow them to report the impact of those decisions to the Legislature.

Mark Johnson said that he has no problem reporting this information but would prefer reporting at the revenue forecasting meeting.

Co-Chair Hillyard stated that LFA will continue to track these decisions, and if there is a problem, this issue can be put back on the agenda.

5. Review of Qualifications for Participation in PEHP and URS

Danny Schoenfeld, LFA, directed the committee's attention to three documents under Tab 5, "URS Employer Eligibility", "Schedule of Participating Employers/ URS 2006 Comprehensive Annual Report", and "PEHP Policy Holder Roster, 2007-2008".

Mr. Schoenfeld briefly described the process and procedures governing an employer's participation with the Utah Retirement System (URS) and the Public Employees Health Program (PEHP).

Dan Anderson, Counsel, Utah Retirement Systems, gave a brief history of the URS and explained eligibility participation requirements under federal and state law analysis for URS and PEHP. Under federal law, the basic criterion is that an employer is eligible to participate with URS if it is eligible to participate in a government-sponsored retirement plan. Under U.C.A. Title 49, employers [other than the State] including political subdivisions and educational institutions, are eligible, but not required to participate in PEHP.

Mr. Anderson pointed out that there is a large difference between the two entities (PEHP & URS).

Mr. Anderson informed the committee that in June of 2008, the Department of Labor (DOL) and the Internal Revenue Service (IRS) will be coming out with updated joint guidelines for determining if an employer meets the governmental plan definition. These guidelines will be used to update current Utah employee rosters.

Co-Chair Hillyard relinquished the chair to Co-Chair Bigelow.

Jeff Jensen, Director, PEHP, stated that Mr. Anderson had sufficiently explained the similarities and differences between the two programs.

President Valentine asked about quasi-government entities that do not meet the definition of "state, political subdivisions, or educational institutions" for PEHP eligibility under U.C.A. 49-20-201 (1)(b). Mr. Anderson responded that historically, these quasi-state agencies have been considered political subdivisions because they could not exist without state action.

Rep. Clark asked about the status of credit unions shown on the URS Schedule of Participating Employers. Mr. Anderson explained that even though these credit unions are now privatized, they were once sponsored by government entities, and are, therefore, grand fathered into the program.

Co-Chair Bigelow relinquished the chair to Co-Chair Hillyard.

6. Budgetary Procedures Act Recodification: Requirements of Governor

Jonathan Ball, LFA, reviewed the handout: "Recommended Structure and Schedule for Consideration of Budgetary Procedures Act Recodification." Mr. Ball explained that the in-depth budget review will be broken out into monthly increments, focusing on requirements of the Executive Branch (Governor) for the month of May. In December, a final bill will be prepared and presented to the Executive Appropriations Committee to take action on.

Mr. Ball explained the format and content of the report, "Budgetary Procedures Act Recodification - Requirements of the Governor." He suggested that the committee may want to form a subgroup to work through the specifics of the Recodification.

MOTION: Co-Chair Bigelow moved that a subcommittee comprising the Co-Chairs and Vice-Chairs of the Executive Appropriations Committee consider and present a Recodification proposal of the Budgetary Procedures Act to the committee.

John Fellows, Deputy General Counsel, LRGC, suggested two approaches in preparing recodification legislation. One approach would be to prepare two or three separate bills: a recodification bill that would be a straight rewrite in the language that already exists; a technical revisions bill; and a substantive revisions bill. The first two less controversial bills could be run in the first week of Session, while the substantive revisions bill that requires more legislative discussion, could be presented later on. The second approach would be a rewrite of the Budgetary Procedures Act that incorporates recodification, technical revisions, and substantive revisions in a single bill. If trouble arises in the legislative process, there is a greater risk of losing the entire bill with this approach.

Co-Chair Hillyard stated that he would prefer separate bills.

Sen. Goodfellow congratulated John Fellows as he assumes his new position with LRGC.

Sen. Dmitrich recommended that the subcommittee include one member from the Senate Minority Party and one member from the House Minority Party.

Rep. Litvak asked that the committee be kept apprised of technical and substantive revisions being

considered before the final legislation has been prepared.

Sen. Hillyard recognized John Fellows, who has been selected to replace Gay Taylor as General Counsel, effective June 1, 2008. A reception will be held for Gay Taylor on Wednesday, May 21, 2008 from 4:00 - 6:00 pm. in the Gold Room, State Capitol. Ms. Taylor is retiring after many years of service.

SUBSTITUTE MOTION: Sen. Dmitrich moved that a subcommittee comprised of Co-Chairs, Sen. Lyle W. Hillyard and Rep. Ron Bigelow, Vice-Chairs, Sen. Knudson and Rep. Becky Lockhart, and Sen. Brent Goodfellow and Rep. Carol Spackman Moss review the Budgetary Procedures Act with the assistance of the Office of the Legislative Fiscal Analyst, and present proposed legislation to the committee. The motion passed unanimously with Sen. Bramble, Speaker Curtis, and Rep. King absent for the vote.

7. Transportation Funding Updates: County of 1st or 2nd Class Prioritization

Mark Bleazard, LFA, reviewed the transportation funding provisions of Title 59-12-1703 UCA. He introduced Doug Larsen, Weber Area Council of Governments (WACOG) and Chuck Chappell, Wasatch Front Regional Council, who reported on a proposed increase in sales tax by a third quarter cent for transportation projects in Weber County.

The report was made available to the committee under Tab 7, "Transportation Project Prioritization Process, Weber County, Third Quarter Cent Sales Tax Increase, April 2, 2008."

President Valentine expressed an interest in having Rep. Brad Dee comment on the report before the Committee approved the prioritization process.

Rep. Lockhart clarified that legislation requires that the Executive Appropriations Committee approve the prioritization process, not the transportation projects. She asked what is different about Weber County's prioritization process as compared to Salt Lake County's prioritization process.

Chuck Chappell, Wasatch Front Regional Council, explained that Weber County did not have the same expectation on the ballot issue as there was in Salt Lake County. There was more open competition for transit and highway projects. In addition, Weber County benefitted from a post Salt Lake County legislative audit that made recommendations to amend the prioritization process. Consequently, Weber County made changes to their own prioritization process and ultimately adopted criteria and weights, and calculations as found in Tables 2, 3, and 4 of the report.

Co-Chair Hillyard directed the committee's attention to page 6 of the report. Section 59-12-1704 (3) states that the council of governments of a county of the first or second class shall submit the proposed written prioritization process described in this section to the Executive Appropriations Committee for approval prior to taking final action on the proposed written prioritization process or any proposed amendment to the written prioritization process. This is in keeping with Rep. Lockhart's statement.

Rep. Lockhart asked why the proposed environmental criterion was weighted "1". Mr. Larsen stated that Weber Co. used the same weighting as Salt Lake County. Mr. Chappell explained further that Salt Lake County chose to reflect state law which ordered cost effectiveness and congestion relief at the top of the list, with little emphasis on environment. Both Salt Lake and Weber Area COGs added the

environmental criteria but did not give it a high weight.

MOTION: Sen. Knudson moved to approve the transportation project prioritization process for Weber County. The motion passed unanimously with Speaker Curtis and Rep. King absent for the vote.

8. State Funds for Military Installations (UCA 63-38f-1901)

Co-Chair Hillyard gave the committee the option of hearing the report in ten minutes, accepting the written report, or rescheduling it for next month's meeting.

MOTION: President Valentine moved to accept the written report for State Funds for Military Installations (UCA 63-38f-1901). The motion passed unanimously with Speaker Curtis and Rep. King absent for the vote.

President Valentine indicated that he had reviewed the report sent out to committee members prior to the meeting.

9. Other Business

Co-Chair Hillyard encouraged committee members to review the Appropriations Report 2008-2009 prepared by staff.

Co-Chair Hillyard entertained a motion to adjourn.

MOTION: Co-Chair Bigelow moved to adjourn. The motion passed unanimously with Speaker Curtis and Rep. King absent for the vote.

Co-Chair Hillyard adjourned the meeting at 3:00 p.m.